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BLUE POWER: THE THREAT OF THE MILITANT POLICEMAN

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There has been much written in both the popular and scholarly press of the student activist and the black militant. Both have been defined, catalogued, explained, promoted, and condemned. But little has been written about another type of militant, one significant not because of his numbers but because of his position. He is an official of our government, one endowed with the public trust, and the one with perhaps the greatest claim on the title "public servant." He has only recently emerged, in part as a reaction to the more widely known activist. And, probably most troublesome, he is apparently widely accepted by both the public and many of his peers as the solution to acknowledged and important problems. He is the militant policeman.

In general it seems that two types of militant policemen have emerged. One is the officer who sees in his job, either consciously or unconsciously, the possibility of fulfilling or working toward the fulfillment of a political or ideological goal. The second type seems more common and more altruistically motivated, but still can cause serious problems. He is the one who sees lawful restraints on police power, whether right or wrong, as unnecessary formalities which may be ignored in order to "do his job."

The militant policeman is still a tiny minority. But he is far from insignificant, for he can cause damage far out of proportion to his numbers. For this reason, he must be recognized and understood by administrators and dealt with before he becomes a major power.

That militant policemen are here and now is readily evident in the formation of the Law Enforcement Group (LEG) in the New York City Police Department in 1968. It was originally organized, without sanction of the New York Police Commissioner, in the 80th Precinct in Brooklyn,[1] when officers circulated a petition demanding the removal of Criminal Court Judge John F. Furey from the bench for allegedly giving his tacit approval to the disruptive tactics in court of two Black Panther suspects.[2] Before long, however, the petition drive became an organizing drive. A list of seven demands were circulated through all New York precincts. The major demands were for a grand jury investigation of supposed "coddling" of criminal suspects in Furey's and other Criminal Courts, and the abolition of the department's Civilian Review Board. A LEG spokesman also said it would "contact and wholeheartedly support the United States senators who are trying to prevent another Warren Court."[3]

It appears that the LEG was a militant faction of New York's Patrolmen's Benevolent Association, and it chose to involve itself in politics. In some inspecific manner, the LEG was connected with the attack on September 4, 1968, on a group of Black Panthers on the sixth floor of Brooklyn Criminal Court. The *New York Times*' David Burnham reported that about 150 white men, swinging blackjacks, descended on the Panthers. "Many," he said, "were off-duty and out-of-uniform policemen. ... At least two ... are on the executive board of the Law Enforcement Group."[4]

Whether the beating was a function of the new group or was a spontaneous reaction to which the LEG members were sympathetic is of little consequence. The militant action had the same results. The heads of two Panther leaders were bloodied, and another complained of being shoved down and kicked, twenty or twenty-five times in the back. And, according to Burnham, one of the injured Panthers later grimly promised revenge while fingering his bullet-laden bandolier.

[1] Fox, "Leary Says Police Reflect Community in a Swing to Right," N.Y. Times, Sept. 11, 1968, at. 1

[2] Zion, "Rights Groups Assail Demands of New Police Unit," N.Y. Times, Aug. 9, 1968, at 16.

[3] *Id.*

[4] Burnham, "Off-Duty Police Here Join in Beating Black Panthers," N.Y. Times, Sept. 5, 1968, at 1.

New York Police Commissioner Howard R. Leary offered an explanation for the appearance of a militant right wing, but did not hint at a solution. Mr. Leary said the emergence of the rightest groups was a reflection of a similar swing to the right in the community at large. "They are responsive to what they believe the community wants," Leary said.[5] Only three days later, New York Patrolman Michael P. Churns, a director of LEG, promised that members of the organization "would continue to mobilize the police and the public in the fight against crime despite the threat of expulsion from the Patrolmen's Benevolent Association." Churns also told reporter Burnham that LEG was not " 'a right-wing organization, not a radical organization. We simply are endeavoring to weld the public and police into a single New York and national organization that is anti-crime and pro law and order.' " [6] What Churns did not say, and perhaps does not even recognize, is that the term "pro law and order" is going to mean very different things depending on to whom he is speaking. It has become a political stance, not a statement of ideals.

LEG is not the only problem in New York. The Patrolmen's Benevolent Association, which is considered by no means as militant as LEG but which becomes involved in political matters on occasions, has issued at least one directive to its membership, about 99 per cent of the force, which could be interpreted as militant. On August 12, 1968, president John Cassese instructed officers "that if a superior told them to ignore a violation of the law, they should take action notwithstanding that order." [7] On its face, the directive sounds good. However, as a task force of the National Commission on the Causes and Prevention of Violence points out, it can subvert the control of the administrator in potentially explosive situations. Under the directive, the administrator cannot order his men not to shoot looters during embryo racial disturbances and be sure of obedience. The directive could, in some situations, turn a relatively minor disturbance into open warfare.

New York is not the only city with militant police problems, as Mayor Carl Stokes of Cleveland could point out. On July 23, 1968, there was a gunfight between police officers and black militants. Stokes, a Negro, was blamed by many policemen. During the next few weeks, the police bands crackled with occasional obscene references to the mayor and his picture appeared frequently on station bulletin boards with the caption: "Wanted for Murder." [8]

Stokes' problems with the police have continued and are continuing. When the mayor ran for reelection in 1969, for example, about 400 off-duty policemen and firemen, many driving cars with stickers supporting Stokes' opponent, appeared at polling places to challenge voters who were supposedly improperly registered. The majority went to the Negro sections, where Stokes claims his greatest strength. The officers had to be ordered away from the polls by their commanders.[9] Four days before the primary elections in Cleveland, the Fraternal Order of Police took full-page ads in the city newspapers condemning the mayor for "refusing to respond" to the organization's suggestions for police improvement. Stokes and police leaders, notably then Chief Patrick Gerity, have clashed openly over administration attempts to exercise control within the police department.[10]

"I talk to a lot of mayors in my work," Stokes told one reporter of his problems with the police, "and I find that the same problem is being faced by mayors in New York, San Francisco, Boston—you name it. It is just a little hotter in Cleveland." [11]

The courthouse attack on the Black Panther duo in New York involved many officers who were wearing campaign buttons for presidential candidate George Wallace. Wallace's campaign seemed to attract most of the police militants, and many of those who, though not militant themselves, sympathize with officers who are. *New York Times* correspondent Ben A. Franklin wrote during the 1968 campaign on the policemen's attraction to Wallace, and gave two minor, but significant, instances where acceptance of Wallace's beliefs led uniformed officers to take politically motivated actions.

One of these was in Hammond, Indiana, where correspondent Franklin reported a middle aged

[5] Fox, *supra* note 1.

[6] Burnham, "New Police Group Maintains Stand," N.Y. Times, Sept. 4, 1968, at 61.

[7] J. SKOLNICK, THE POLITICS OF PROTEST: A STAFF REPORT TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, 207 (1969).

[8] *Id.* at 206–207.

[9] King, "Stokes Defeats Cleveland Rival," N.Y. Times, Nov. 5, 1969, at 36.

[10] Hess, "Stokes Challenger: Police Unit," Christian Sci. Monitor, Oct. 30, 1969, at 12.

[11] Mayor Carl Stokes speaking to D. J. R. Bruckner of Los Angeles Times, as quoted by Cray, *The Politics of Blue Power*, NATION, April 21, 1969, at 493.

couple sat high in a gallery at a Wallace rally, away from the candidate's supporters. The couple was causing no disturbance. But they were holding a small, hand-lettered sign reading "Dick Gregory for President." Almost immediately, they were escorted from the hall by a cadre of uniformed officers. The other incident, in Louisville, Kentucky, found Mr. Wallace speaking to another political rally. His commendation of Chicago police actions at the 1968 Democratic National Convention drew overwhelming response. But one small "boo" drifted across the audience. "Policemen sprinted from every direction to the gallery section from which the jarring sound had come," Franklin reported, "but were not immediately able to pinpoint the troublemaker in the throng. 'Point him out to me,' one policeman commanded. Fingers were pointed, and three cleanly dressed teenagers, two boys and a girl, were paraded down the aisle and out of Louisville's Freedom Hall to a chorus of cheers and jeers." [12]

Such action does not necessarily portend a police state. But it is hardly reassuring. Would those officers have responded the same to quiet, orderly dissenters at rallies for candidate Eugene McCarthy? If not, the patrolmen were using their office to advance the interests of a political ideology, an action which has little place in a democracy.

Yet, the political activity of police officers has continued to grow. In Detroit, officers contributed money and off-duty time to advance the mayoral campaign of Wayne County Sheriff Roman Gribbs. White police campaigned in Los Angeles for Mayor Sam Yorty. Minneapolis police hit the campaign circuit for Charles Stenvig, a detective turned mayor. Some Pittsburgh officers had to be told to remove from their patrol cars bumper stickers supporting Eugene Coon, a former assistant superintendent of police running for county sheriff.[13]

While these incidents of police militancy are fairly recent, perhaps their roots are not. Six years ago, John H. Rousselot, the national public relations director of the John Birch Society, claimed that extremist group had members in the police department of all principal cities in the United States.[14]

[12] Franklin, "Wallace Hailed by Police on Tour," N.Y. Times, Sept. 8, 1968, at 78.

[13] Glickman, "Police in Many Cities Shed Nonpartisan Role for Active Politicking," Wall Journal, Oct. 30, 1969, at 1.

[14] Weart, "Bircher Defends Enlisting Police," N.Y. Times, Nov. 17, 1964, at 21.

The militant officer spoken of so far is of the political or ideological bent and almost certain to be Caucasian. But there is another type of militant officer who was first reported only recently. Administrators must be equally aware of his emergence. He is the black militant officer, whose militancy is directed at the white policeman. *New York Times* reporter John Darnton puts this officer in perspective:

> In many cities the gulf has widened as blacks have withdrawn from traditional police organizations to form their own. Virtually every major city now has a black policeman's organization.
>
> 'We don't meet as policemen. We meet as members of the black community,' explained Mr. [Leonard] Weir of the Society of Afro-American Policemen. Mr. Weir's group, founded in 1965, now has chapters in Newark, Philadelphia, Chicago, and Detroit. Its headquarters is in New York.
>
> The society's younger, more militant officers are currently challenging the leadership of the Council of Police Societies, which was formed in 1960 and has 22 chapters.
>
> But Mr. Weir still scoffs at black policemen in general, even those who join black organizations. 'They're all mouth and no action,' he said. 'I don't want to hear the talk. I want to hear the thunder. I want to see the lightning.' [15]

The full impact of the black police organization cannot be assessed at present. They may become black pride groups and advance their departments through recruitment of black officers and improvement of community relations in black areas. Or they may become black militants with power no black activists have had before.

The existence of the militant policeman has been established in a few specific instances. How far has he gone, what has he done, why does he do it? The report of Jerome H. Skolnick, a professor at the University of California at Berkeley, to the National Commission of the Causes and Prevention of Violence, explores these matters in a full chapter, "The Police in Protest." For example:

> The police tend to view themselves as society's experts in the determination of guilt and apprehension of guilty persons. Because they also see themselves as an abused and misunderstood minority, they are particularly sensitive to what they perceive as challenges to 'their' system of criminal justice—whether by unruly Black Panthers or 'misguided' judges.[16]

[15] Darnton, "Color Line a Key Police Problem," N.Y. Times, Sept. 28, 1969, at 1.

[16] SKOLNICK, *supra* note 7, at 212.

> Police organizations such as the Patrolmen's Benevolent Association, conceived of originally as combining the function of a trade union and lobbying organization for police benefits, are becoming vehicles for the political sentiments and aspirations of the police rank and file, as well as a rallying point for organized opposition to higher police and civilian authority.[17]

Throughout the chapter, various conclusions are drawn by Dr. Skolnick and his staff. A summary of the implications of the Skolnick report was contained in an interpretive article by John Herbers published in the *New York Times* shortly after the report came out. Herbers' article dealt only with the one chapter on police activism:

> "The politicization of the police has gone so far, the Skolnick report concludes, that in many cities and states the police lobby rivals even elected officials in influence and that the militancy of the police seems to have 'exceeded reasonable bounds.'
>
> Another factor, which some find equally disturbing, is the degree of public acceptance of the police lobby and alleged police excesses. . . .
>
> Law enforcement officers from J. Edgar Hoover down to the cop on the beat tend to equate protest with subversion, the Skolnick report asserts, and Mr. Hoover is among those blamed for spreading this view, by repeating endlessly that Communists are at the forefront of a number of mass protests that have emerged in recent years. Thus, instead of the police being a neutral force maintaining the peace without fear or favor at the discretion of civil authority, they have become, the report suggests, highly partisan militants with the narrowest conception of social deviance, however legal.[18]
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> * * *
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> In city after city, from Boston to Los Angeles, the police are bringing pressure on the regular political institutions ranging from organized support of political candidates to lobbying in state legislatures for broadening the areas in which police may use deadly force. The report cited one survey which found the police are 'coming to see themselves as the political force by which radicalism, student demonstrations and black power can be blocked.'[19]

What motivates the militant policeman is not yet fully known for there have been few studies and none involving exhaustive research—the problem is too new. But from what little has been written on the problem, and from the papers dealing with subjects roughly analogous to police militancy, one may conclude that the alienation of police from the society they serve is held by all as a common cause. The three views following, each in a different sense, present the view that the policeman is isolated and somewhat alienated from those he is supposed to serve. This alienation leads to frustration and a common antagonism toward the public. When the officer attempts to rebuild the ego that is constantly subjected to rebuffs and indignities, his idealism can gradually degenerate into an ethnocentric view of society in general and the system of justice in particular. When that mental attitude develops, and is seen in context with the very nature of the policeman's job, militancy can be seen as a not impossible result.

Hans Toch, professor of psychology at the School of Criminal Justice at the State University of New York at Albany, treats the problem head on in an article dealing with militant blacks versus militant police. His views can be generally applied to militant policemen.

> Militant police officers—like militant blacks—react with the premise that they can no longer operate within the system. They feel that, to make themselves heard and respected, they must by-pass the strictures imposed by an insensitive, or even malevolent, power structure. In a sense, this goes beyond the routine gambit of positive minorityism. It represents a super-defensive reaction, which arises when standard group defenses fail. It is found among those members of a minority—mainly the young—who sense behind the self-delusion of their fellows an unresolved, permanent impotence. What they demand is removal of social institutions that enforce impotence; these, unfortunately, may include competing minorities.[20]
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> * * *
>
> It would be bad enough if militant minorities presented problems for their own kind, but the threats they pose extend to non-militants, and to the public at large. No one can speak up to a Blue Power officer without implicating the police as an institution. Anything less than assent to omnipotence becomes an affront to 'the law.' In turn, anything the officer does . . . becomes an act of 'law enforcement.' Disagreeing with a militant officer lays one open to the accusation of being motivated by perversity, prejudice and incipient anarchism. For his part, the officer feels perpetually

[17] *Id.* at 210.

[18] Herbers, "A Charge That Police Are Now Too 'Political,'" N.Y. Times, June 15, 1969, § 4, at 2.

[19] *Id.* The inner quote is from the original study, not from the Skolnick report. *see* SKOLNICK, *supra* note 7, at 210.

[20] Toch, *Cops and Blacks: Warring Minorities*, NATION, April 21, 1969, at 491.

persecuted, in that again and again, as he bumbles his way through his awkward personal encounters, the social order appears subjected to unbearable contempt. This leads to cumulative bitterness and increased militancy. When bluff and bluster achieve nothing, it follows that the blame must lie elsewhere. Personal impotence is attributed to national 'criminal coddling.' The officer feels 'handcuffed,' not by his own behavior, but by bleeding-heart judges and politically motivated civilians.[21]

Columbia University Professor Robert M. Fogelson has analyzed a related problem, police violence as a contributing factor in the riots of the 1960's. Though violence is his central concern, part of his analysis is applicable to militancy.

To begin with, the police feel profoundly isolated from a public which, in their view, is at best apathetic and at worst hostile, too solicitous of the criminal and too critical of the patrolman. They also believe that they have been given a job to do but deprived of the power to do it. Excessive force is a way to even the score. Moreover, the police, who in America are regarded as employees of the taxpayer rather than as representatives of the law, do not receive the deference accorded them in most Western European countries. Held in such low esteem that they cannot command respect merely by virtue of their position, they must rely on a personal, as opposed to a professional claim to authority. They must be tough. This sense of isolation and absence of respect render it difficult, if not impossible, for most American policemen to maintain law and order and at the same time abide by a policy of minimal physical force.[22]

* * *

A large majority of them are convinced that it is harder to maintain public order today than ever before, that the criminals are more active, the public less cooperative, and the courts too lenient. For these reasons the police vigorously assert their authority and otherwise intensify their surveillance in high-crime neighborhoods; only by these means, they assume, can patrolmen insure due respect for the police and reduce the opportunities for crime. And though the police argue that the public should approve, and indeed trust that all law-abiding citizens will do so, they do not consider public approval essential.[23]

Sociologist William A. Westley also wrote about the problem of police violence, but almost twenty years ago. Ideas presented by Fogelson and Toch are similar to those of Westley, and suggest the frightening possibility that, since 1953, things have not changed much—at least for the better—in bringing the police to a harmonious relationship with the public. In 1953, Dr. Westley noted:

The policeman finds his most pressing problems in his relations to the public. His is a service occupation, but of an incongruous kind, since he must discipline those whom he serves. He is regarded as corrupt and inefficient by, and meets with hostility and criticism from, the public. He regards the public as his enemy, feels his occupation to be in conflict with the community, and regards himself to be a pariah. The experience and the feeling give rise to a collective emphasis on secrecy, an attempt to coerce respect from the public, and a belief that almost any means are legitimate in completing an important arrest. These are for the policeman basic occupational values. They arise from his experience, take precedence over his legal responsibilities, are central to an understanding of his conduct, and form the occupational contexts within which violence gains its meaning.[24]

* * *

The existence of such goals and patterns of conduct (independent of and taking precedence over his legal mandate) indicates the policeman has made of his occupation a preoccupation and invested in it a large aspect of his self.[25]

What can be done about the militant policeman? At the outset there is the principle expressed in a *New York Times* editorial that the police are entitled to all the rights and privileges of any citizen, particularly in his off-duty hours. In essence, the police can do anything anyone else can do, but no more.[26] But such principle does not solve the problem; the old political dictum that one must not only be honest, but must also appear honest, can be applied to political or ideological actions of the police. When the police take on an aura of partisanship, whether deserved or not, their value to the public is lessened.

Harried police and public officials might turn to the news media for a useful guideline. Most quality newspapers try scrupulously to keep reporters from revealing any hint of partisanship in news writing. In fact, many newspapers flatly forbid their reporters from taking part in any political

[21] *Id.* at 492.
[22] Fogelson, *From Resentment to Confrontation: The Police, the Negroes, and the Outbreak of the 1960's Riots*, Pol. Sci. Q. 224–225. (June 1968).
[23] *Id.* at 230.
[24] Westley, *Violence and the Police*, 59 Amer J Sociology, 35 (1953).
[25] *Id.* at 41.
[26] "One Law For All" (editorial), N.Y. Times, Sept. 7, 1968, at 28.

campaign except where their identity as newspaper reporters can reasonably be expected to be unknown, and then only in a spectator's role, not as a participant.

It may be said that objectivity is more important to newspapers than police, since the media are the public's source of supposedly unbiased information. On the other hand, if the public does not agree with one newspaper or television station, there are usually others they may patronize. But there is only one local police force to serve the highly diverse factions of society. So the police must not be allowed to select, or appear to select, who they will or will not serve.

The concept that the *impression* as well as the *fact* of political bias must be removed from the police is only slightly more extreme than notions expressed in the conclusion of the Skolnick report:

> So, while the police may be analogous to other government employees or to members of the armed forces, they are also, and perhaps more importantly, analogous to the judiciary. Each interprets the legal order to and imposes the legal on the population, and thus the actions of each are expected to be neutral and non-political. In the case of the judiciary, there is a strong tradition of removing them from the partisan political arena lest their involvement impede the functioning of the system.[27]

Dr. William P. Brown, a former inspector of the New York City Police Department and now, like Dr. Toch, a Professor at the School of Criminal Justice at the State University of New York at Albany, sees the need for a re-orientation of the police to meet the ambiguous and changing situations confronting them.

> We know most of the answers in terms of attitude changes and of practical working devices which could help the police to gain . . . recognition. We know that they face situations in which, in contrast to the Western sheriff model which has always characterized their own image of their work, they are not expected to emerge immediately victorious or die trying. They must also recognize that the high standard of individual rights which the Supreme Court has enunciated is not just an impediment to their work, but actually a call for a higher standard of work which will bring with it social recognition that they are performing at a higher professional level.
>
> The need is . . . to meet a standard of performance under difficulties which we could not even have visualized a few years ago. Above all, they must develop a faith that if they do perform at this level, they will eventually win the support that can make their future job possible.[28]

The solution is far from crystal clear. However, there are steps which should be taken. The administrator must move to break down the walls which form between the police and the public. Community relations units are one step, if they are properly staffed, directed and sanctioned. Implementing a review board or other means to objectively air citizen grievances, is another if accepted by officers as distinct from a board of inquisition. Restricting policemen from partisan political activity under conditions where they would be representing themselves as officers is a third. But probably the most important step is instruction and the "tone" of each force. Every officer must be convinced that service is his primary function, and that society's deviants and rebels are as deserving as society's leaders. The officer on the line must be willing to serve all equally regardless of political persuasion or personal conviction. He must be convinced that this is what his superiors sincerely want.

The police militant movement, as has been stated, involves a tiny minority. The police militant must not be allowed to recruit others, and those active now, in a negative sense, must either be reformed or removed. For if the police militant ever gains prominence, we will no longer have a police force. We will have the vanguard of a police state.

[27] SKOLNICK, *supra* note 7, at 214.

[28] Brown, *Mirrors of Prejudice*, NATION, April 21, 1969, at 499–500.